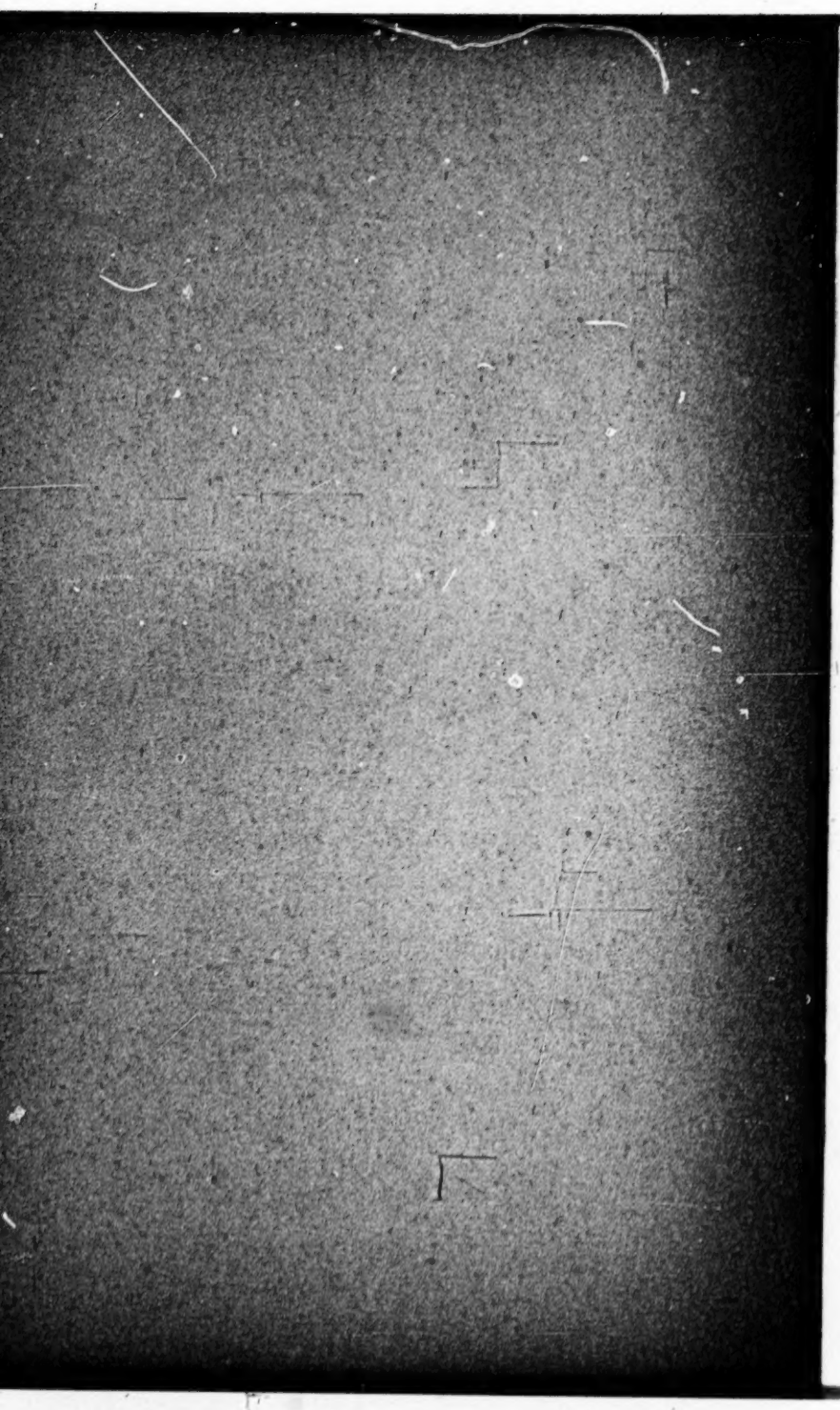

SUPREME COURT, U. S.

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FILED
DEC 28 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1974

No. 74-304

RICHARD A. GORDON, etc.,
Petitioner,

against

NEW YORK STOCK EXCHANGE, INC., et. al.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

OBJECTIONS TO MOTION OF THE RETIREMENT BOARD OF THE TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

WILLIAM ELDRED JACKSON
ISAAC SHAPIRO
MARK L. DAVIDSON
1 Chase Manhattan Plaza
New York, New York 10005
Attorneys for Respondents New York Stock Exchange, Inc. and Bache & Co., Inc.

JOHN J. LOFLIN, JR.
25 Broadway
New York, New York 10004
Attorney for Respondent American Stock Exchange, Inc.

JAMES B. MAY
1 Liberty Plaza
New York, New York 10006
Attorney for Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.

Of Counsel:

MILBANK, TWEED, HADLEY & MCCLOY
1 Chase Manhattan Plaza
New York, New York 10005

LORD, DAY & LORD
25 Broadway
New York, New York 10004

BROWN, WOOD, FULLER, CALDWELL & IVEY
1 Liberty Plaza
New York, New York 10006

December 27, 1974

IN THE

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Respondents object to the motion of the Retirement Board of the Teachers' Retirement System of the City of New York (the "applicant") for leave to file an *amicus curiae* brief herein.*

Applicant is not a "political subdivision" of a state and is therefore not entitled to file an *amicus curiae* brief under Rule 42 of the Rules of this Court without proceeding by motion.

Applicant proposes to present "facts and statistics relating to the economic impact of the fixed commission schedules of the major exchanges upon the retirement benefits of a large class of public employees." (Motion,

* Contrary to applicant's assertion (Motion, p. 2) none of the attorneys for any of the respondents has consented to the filing of an *amicus* brief by applicant.

p. 3) Such information is irrelevant to the issue presented for consideration by this Court—whether by reason of Section 19(b) of the Securities Exchange Act of 1934 (15 U.S.C. § 78s(b)) the respondent exchanges' rules fixing commissions to be charged by their members are exempt from antitrust attack. The economic impact of these rules is simply not relevant to a determination of the antitrust exemption issue, which is solely a question of law.

Moreover, the facts which applicant wishes to present are evidentiary, not a part of the record in this case or judicially noticeable and, accordingly, cannot properly be presented to this appellate tribunal. Likewise, petitioner has not made any arguments based on economic impact. Thus, this Court should not consider such facts. *Knetsch* v. *United States,* 364 U.S. 361, 370 (1960). Therefore, applicant's motion should be denied.

Respectfully submitted,

WILLIAM ELDRED JACKSON
ISAAC SHAPIRO
MARK L. DAVIDSON
1 Chase Manhattan Plaza
New York, New York 10005
Attorneys for Respondents New York Stock Exchange, Inc. and Bache & Co., Inc.

JOHN J. LOFLIN, JR.
25 Broadway
New York, New York 10004
Attorney for Respondent American Stock Exchange, Inc.

JAMES B. MAY
1 Liberty Plaza
New York, New York 10006
Attorney for Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.

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MILBANK, TWEED, HADLEY
& MCCLOY
1 Chase Manhattan Plaza
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BROWN, WOOD, FULLER,
CALDWELL & IVEY
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